



HOUSE OF REPRESENTATIVES

SB 1350

online lodging; administration; definitions

Prime Sponsor: Senator Lesko, LD 21

DP Committee on Ways and Means

X Caucus and COW

House Engrossed

OVERVIEW

SB 1350 establishes regulations for online lodging and vacation rental operations.

PROVISIONS

Vacation Rental Regulations

1. Prohibits a city, town or county from restricting the use or regulation of vacation rentals and short-term rentals based upon their classification, use or occupancy.
2. Specifies that a city, town or county may regulate vacation rentals if the regulation is meant to protect public health and safety, including fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control.
3. States that a city, town or county may limit or prohibit the use of vacation rentals for each of the following purposes: housing sex offenders, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented businesses.

Online Lodging: Audits

4. Specifies that an online lodging marketplace, its returns and its payments of taxes are subject to audit by the Department of Revenue (DOR).
5. Stipulates that the audit of an online lodging marketplace must be conducted solely on the marketplace's taxpayer identification number and not directly or indirectly on any individual online lodging operator or occupant to whom lodgings are furnished through an online lodging transaction.
6. Specifies that an online lodging operator is not required to disclose any personally identifiable information relating to an operator or occupant whose lodging was furnished in exchange for a charge for occupancy.
7. Prohibits DOR from disclosing information provided by an online lodging marketplace without the written consent of the marketplace.

Online Lodging: Taxation

8. Allows an online lodging marketplace to register with DOR for the payment of taxes levied by the state or a political subdivision thereof for any online lodging transactions.
9. Requires an online lodging marketplace that is registered with DOR to remit all taxes for each online lodging transaction facilitated by the marketplace.
10. Specifies that an online lodging marketplace must remit the aggregate total amount for all respective taxing jurisdictions and report taxes monthly to DOR.
11. Stipulates that the taxes imposed for each online lodging transaction that involves a lease or rental for the right of use or occupancy of the property for thirty or more consecutive days are taxed under

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the commercial lease classification of transaction privilege tax (TPT) and must be remitted by the online lodging marketplace to DOR.

12. Specifies that the activities of any online lodging marketplace are not classified as transient lodging.
13. Provides that an online lodging marketplace is not required to list or identify any individual online lodging operator on any return.
14. Exempts the gross proceeds or gross income received by an online lodging operator from any taxes for online lodging transactions made by an online lodging marketplace, for which there is written notice that the marketplace is registered with DOR for the collection of taxes and documentation of tax collected.
15. Stipulates that a city, town or other taxing jurisdiction may levy TPT, use, franchise or other similar taxes or fees on an online lodging operator if the following requirements are met:
 - a. The adopted tax is uniform with the treatment of online lodging operators and transactions.
 - b. The adopted tax is administered, collected and enforced by DOR and remitted to the city, town or other taxing jurisdiction in a uniform manner.
 - c. The adopted tax is uniform upon online lodging operators and other taxpayers of the same class within the jurisdictional boundaries of the city, town or other jurisdiction.
 - d. Any adopted tax is subject to provisions relating to audits, confidential information, judicial enforcement, registration of online lodging marketplaces and tax returns.

Miscellaneous

16. Classifies real and personal property and improvements, used for leasing or renting to lodgers, as class four property, except for:
 - a. Property occupied by the owner as the primary residence, included in class three.
 - b. Property used for commercial purposes as classified in class one.
17. Defines terms.
18. Makes technical and conforming changes.
19. Sets an effective date of January 1, 2017

CURRENT LAW

TPT is imposed on a vendor for the privilege of conducting business in Arizona. Under this tax, the seller is responsible for remitting to the state the entire amount of tax due based on the gross proceeds or gross income of the business. While the tax is commonly passed on to the consumer at the point of sale, it is ultimately the seller's responsibility to remit the tax.

TPT is broken down into 16 different classifications. The transient lodging classification is comprised of the business of operating for the occupancy of *transients*—any person who either at their own or another's expense obtains lodging space on a daily or weekly basis for less than 30 consecutive days. The classification includes hotels or motels, inns, tourist homes, dude ranches, resorts, campgrounds and other similar establishments. Transient lodging does not include convalescent homes or facilities, rental of a mobile home or house trailers at a fixed structure and renting four or fewer rooms at a bed and breakfast. The tax base for the transient lodging classification is the gross proceeds of sales or gross income derived from the business (A.R.S. §42-5070).

A.R.S. § 42-5005 stipulates that every person who receives income that is subject to TPT must apply to DOR for an annual TPT license in order to engage in or continue business. The license is valid only for the calendar year in which it was issued, but may be renewed each year.